



AMERICANS for TAX REFORM

October 11, 2011

Michigan House Committee on Tax Policy

RE: House Bills 5004 and 5005, Internet Tax and Physical Nexus

Dear Representatives,

I write in opposition to House Bills 5004 and 5005, which would establish an Internet tax and loosen Michigan's physical nexus standard for tax collection. The bills intend to require out-of-state retailers to collect and remit sales tax on products purchased by residents. Yet, the legislation will directly harm Michigan businesses, likely fail to collect new tax revenue or level the tax playing field, and make out-of-state companies think twice about investing in Michigan.

HB 5004 and 5005 would partially dissolve the physical nexus standard for tax collection and push the long arm of the tax collector past its appropriate state boundary. The U.S. Supreme Court's ruling in *Quill v. North Dakota* expressly forbids states from forcing out-of-state businesses with no physical presence to collect and remit sales taxes.

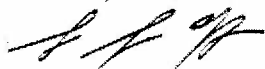
Most disconcerting is the section that attempts to circumvent the *Quill* decision by presuming a company has nexus if business is solicited through a third-party advertiser in the state. This flies in the face of the Supreme Court's ruling and is currently undergoing legal challenge in New York. Also concerning is the section that will deter out-of-state investment in Michigan by forcing collection obligations on companies that take even a very small ownership stake of a company in the state.

If history is a guide, the measure will put Michigan's Internet advertisers out of work, fail to raise revenue for the state, and perpetuate whatever unfair tax playing field currently exists. In each state the affiliate nexus tax has been enacted, retailers have terminated affiliate contracts to avoid the unconstitutional tax, causing tens of thousands of in-state advertisers to go out-of-business. This also severs the out-of-state retailers' nexus in Michigan so that no new tax is collected, rendering the intent – leveling the playing field – irrelevant.

Questions of interstate tax collection fall under the purview of the U.S. Congress, as the *Quill* case itself noted. Congress is currently reviewing varying legislation in the area of remote seller tax collection and I advise Michigan lawmakers to refrain from taking a preemptive and likely unconstitutional course.

Poor enforcement of "use tax" law is no justification for constitutionally dubious legislation, especially if its only guarantee is to negatively impact Michiganders. I strongly urge you to reject House Bills 5004 and 5005. If you have any questions, please contact Kelly William Cobb (202) 785-0266.

Onward,



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